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CHARLES ELMORE COOPLEY
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No. 265

In the Supreme Court of the United States

OCTOBER TERM, 1942

CLYDE-MALLORY LINES, PETITIONER

v.

**STEAMSHIP " EGLANTINE, UNITED STATES OF
AMERICA**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT**

MEMORANDUM FOR THE RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
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MEMORANDUM FOR THE RESPONDENT

Petitioner brought this suit in the District Court of the United States for the Eastern District of Louisiana on June 10, 1937, by filing a libel against the steamship *Eglantine* to recover one-half the difference between the damages sustained by petitioner's steamship *Brazos* and the damages sustained by the *Eglantine* in a collision for which both vessels were at fault as has been adjudicated in other litigation (R. 4-8, 30). The collision occurred December 21, 1932, when the *Eglantine* was owned and operated by the United States as a merchant vessel (R. 29). Subsequent

(1)

to the collision and prior to the institution of the present suit the United States sold the *Eglantine* to Lykes Bros.-Ripley Steamship Co., Inc., the owner on the date of suit¹ (R. 29-30).

A warrant for attachment of the *Eglantine* was issued on the date the present suit was brought and the vessel was seized forthwith by the marshal (R. 9-10). On the same date, pursuant to Section 4 of the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. § 744), the United States filed a suggestion that it was interested in the cause and desired the release of the vessel. Thereupon she was released by order of the District Court (R. 13). In its suggestion the United States assumed liability for the satisfaction of any decree which might be obtained in the cause, but reserved the defense based on the provision of Section 5 of the Act that "Suits as herein authorized shall be brought within two years after the cause of action arises" (R. 11-12). Thereafter, on June 14, 1937, the United States filed an exception to the libel praying that the libel be dismissed on the ground that it was not filed in compliance with Section 5. The District Court overruled the exception (R. 16). Subsequently it heard the case upon a stipulation of facts (R. 32-

¹ The date of the sale is not more specifically shown by the record. In the court below, however, the Government offered to stipulate that the date was April 13, 1933, which was well within the two-year period of limitation for bringing suit. Brief on behalf of the United States, pages 2, 4.

62, 68) and the pleadings, including the answer of the United States (R. 17-22) and petitioner's motion to strike the answer's allegations that the suit was barred by the two-year period of limitation and by laches (R. 6-28).

The District Court held that Section 5 was inapplicable because the suit was not authorized by the Suits in Admiralty Act. It held further that the suit was not barred by laches. On April 29, 1941, a decree was entered against the United States for \$3,829.61 with interest and costs (R. 69-71).

On appeal the Circuit Court of Appeals for the Fifth Circuit reversed on the ground that Section 5 applies and that, therefore, the exception to the libel should have been sustained (R. 82-83).² In so holding, the court expressly declined to follow its previous decision in *The Bascobal*, 295 Fed. 299, and the decision of the District Court for the Southern District of New York in *The Caddo*, 285 Fed. 643. One judge dissented on the authority of the *Bascobal* case.

The decision of the court below is, we submit, correct under the decisions of this Court establishing that the Suits in Admiralty Act provides the exclusive remedy in admiralty against the

² The opinion of the Circuit Court of Appeals is reported in 127 F. (2d) 569. The opinion of the District Court is reported in 38 F. Supp. 658.

United States on all maritime causes of action arising out of the possession or operation of merchant vessels. *United States Shipping Board Emergency Fleet Corp. v. Rosenberg Bros.*, 276 U. S. 202; *Johnson v. United States Shipping Board Emergency Fleet Corp.*, 280 U. S. 320. See also *Federal Sugar Refining Co. v. United States*, 30 F. (2d) 254 (C. C. A. 2). Those decisions, which were relied on by the court below (R. 81-82), conflict with the reasoning adopted in *The Caddo*. Nevertheless, we do not oppose the granting of the petition for writ of certiorari.

The question involved is one of importance to the Government, as well as to private concerns, and it is not altogether free of doubt since this Court has not had occasion to determine the precise issue whether Section 5 applies in an *in rem* proceeding brought after the United States has sold the merchant ship to a private purchaser. Cf. *The Liberty*, 257 U. S. 419; *The Carolinian*, *id.* During the present emergency the Government has been acquiring by construction, purchase, and requisition hundreds of merchant vessels and will, no doubt, continue to do so until after the war. Eventually, in all probability, these vessels will be transferred to private owners and the question involved in this case will recur. In view of the importance to the Government of having the question authoritatively determined so that the liabilities

of the interested parties may be clearly understood when the transfers take place; the Government does not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.

AUGUST 1942.